

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SEAN HOFFARTH,

Plaintiff,

vs.

COUNTY OF SAN DIEGO; et al.,

Defendants.

CASE NO. 11cv0450-LAB (BLM)

**ORDER RE: MOTION TO
DISMISS**

I. Introduction

Plaintiff Sean Hoffarth accuses the San Diego County Sheriff's Department of ignoring his pleas for medical attention over a two week period in which he repeatedly complained of a painful rash. When a doctor finally saw him, he was diagnosed with a staph infection that, he alleges, had become life threatening and took two weeks to treat.

Hoffarth brings five claims against the County of San Diego: two *Monell* claims and claims for negligence, negligent infliction of emotional distress, and intentional infliction of emotional distress. Now pending is the County's motion to dismiss Hoffarth's complaint for failure to properly state those claims.

II. Legal Standard

A rule 12(b)(6) motion to dismiss for failure to state a claim challenges the legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). In considering such a motion, the Court accepts all allegations of material fact as true and construes them in the light most favorable to Hoffarth. *Cedars-Sinai Med. Ctr. v. Nat'l League of Postmasters of U.S.*, 497 F.3d 972, 975 (9th Cir. 2007). To defeat a 12(b)(6) motion, a complaint's factual allegations needn't be detailed, but they must be sufficient to

1 “raise a right to relief above the speculative level . . .” *Bell Atl. Corp. v. Twombly*, 550 U.S.
 2 544, 555 (2007). However, “some threshold of plausibility must be crossed at the outset”
 3 before a case can go forward. *Id.* at 558 (internal quotations omitted). A claim has “facial
 4 plausibility when the plaintiff pleads factual content that allows the court to draw the
 5 reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v.*
 6 *Iqbal*, 556 U.S. —, 129 S.Ct. 1937, 1949 (2009). “The plausibility standard is not akin to a
 7 ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has
 8 acted unlawfully.” *Id.*

9 While the Court must draw all reasonable inferences in Hoffarth’s favor, it need not
 10 “necessarily assume the truth of legal conclusions merely because they are cast in the form
 11 of factual allegations.” *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir.
 12 2003) (internal quotations omitted). In fact, the Court does not need to accept any legal
 13 conclusions as true. *Iqbal*, 129 S.Ct. at 1949. A complaint does not suffice “if it tenders
 14 naked assertions devoid of further factual enhancement” (*Id.* (internal quotations omitted)),
 15 nor if it contains a merely formulaic recitation of the elements of a cause of action. *Bell Atl.*
 16 *Corp.*, 550 U.S. at 555.

17 **III. Discussion**

18 **A. The *Monell* Claims**

19 It is unclear to the Court, and probably unclear to the County, precisely what
 20 Hoffarth’s *Monell* claims are. Under the heading “Policy, Custom or Practice Causing
 21 Constitutional Violation,” Hoffarth alleges in his complaint that the County “maintained a de
 22 facto unconstitutional informal and/or formal policy, custom or practice of permitting, ignoring
 23 and condoning its agents and police officers to ignore complaints of pain or need for medical
 24 attention expressed by arrestees.” (Compl. ¶ 20.) Under the heading “Cruel and Unusual
 25 Punishment,” he alleges essentially the same thing: the County “maintained a de facto
 26 unconstitutional informal and/or formal, policy, custom or practice of ignoring the medical
 27 risks to detainees who suffer infections” and also “maintained a de facto unconstitutional
 28 formal and/or informal policy, custom or practice of ignoring detainees’ request for medical

1 care or treatment, even when requested through the proper means.” (Compl. ¶ 25.) As far
 2 as Hoffarth’s complaint goes, then, his first and second causes of action really collapse into
 3 one: Hoffarth was injured by the County’s policy of indifference to his medical needs, which
 4 is itself an Eighth Amendment violation. See *Estelle v. Gamble*, 429 U.S. 97, 104 (1976).

5 Hoffarth’s opposition brief muddles this further. In the very beginning, he labels his
 6 first claim “Policy, custom, or practice causing Constitutional violations” (which is not really
 7 a claim) and his second claim “Violation of the 8th and 14th Amendments prohibiting cruel
 8 and unusual punishment” (which is not necessarily a *Monell* claim). (Dkt. No. 11 at 1.) He
 9 then bifurcates the second claim into two, calling his first cause of action “Policy, Custom or
 10 Practice Causing a Violation of the 14th Amendment to the U.S. Constitution” and his
 11 second cause of action “Cruel and Unusual Punishment in Violation of the 8th Amendment
 12 to the U.S. Constitution.” (Dkt. No. 11 at 5–6.) To make matters worse, he argues for
 13 liability under *Monell* by alleging that “the legal cause of Mr. Hoffarth’s injuries was
 14 Defendant’s known and constant disregard for the California Code of Regulations (CCR)
 15 minimum standards for Local Detention Facilities in regards to inmate requests for medical
 16 attention, procedures for dealing with communicable diseases, and procedure for prompt
 17 attention and access to inmates with such diseases.” (Dkt. No. 11 at 7.) The problem with
 18 this, of course, is that *Monell* liability is simply *municipal* liability under 42 U.S.C. § 1983, and
 19 for liability under § 1983 to attach in the first place there needs to be a *constitutional*
 20 violation. See *Dougherty v. City of Covina*, 653 F.3d 892, 900 (9th Cir. 2011). The County’s
 21 alleged disregard for CCR policy, in and of itself, cannot give rise to liability under *Monell*.

22 Putting aside Hoffarth’s pleadings, which in their imprecision only confuse the Court
 23 as to the nature and bases of his *Monell* claims, Hoffarth essentially brings a single *Monell*
 24 claim: he was injured pursuant to a County policy of deliberate indifference to the medical
 25 needs of those in the Sheriff’s custody, which is itself a violation of the Eighth Amendment.¹

26
 27 ¹ This claim doesn’t arise, also, under the Fourteenth Amendment, a point of law on
 28 which Hoffarth appears to be confused. The Fourteenth Amendment is implicated in this
 action only because it is under the Fourteenth Amendment that the Eighth Amendment’s ban
 on cruel and unusual punishment is extended to pre-trial detainees. *Ammons v. Washington*
Dep’t of Soc. and Health Servs., 648 F.3d 1020, 1029 (9th Cir. 2011). It has no independent

1 It isn't enough for Hoffarth to allege that the County was deliberately indifferent to *his*
 2 medical needs; a *Monell* claim requires the allegation (and the proof) that it was the County's
 3 *policy* to be deliberately indifferent to the medical needs of those in the Sheriff's custody.
 4 "[I]t is when execution of a government's policy or custom, whether made by its lawmakers
 5 or by those whose edicts or acts may fairly be said to represent official policy, inflicts the
 6 injury that the government as an entity is responsible under § 1983." *Monell v. Dep't of*
 7 *Social Servs. of City of New York*, 436 U.S. 658, 694 (1978).²

8 Hoffarth's allegations to this effect, unfortunately, are wholly speculative and cannot
 9 withstand the pleading standards set forth in *Iqbal*. The only reasonable inference that the
 10 factual allegations of Hoffarth's complaint allow is that *his* medical needs were met with
 11 deliberate indifference. The allegation that his treatment was the regular, customary
 12 treatment afforded to those in County custody is precisely the kind of "naked assertion" that
 13 *Iqbal* holds cannot survive a motion to dismiss. *Iqbal*, 129 S.Ct. at 1949. It is no help that
 14 Hoffarth points to multiple incidents in which his jailers were allegedly deliberately indifferent
 15 to his medical needs; he is still only referencing his own treatment and leaving the Court with
 16 nothing other than the "sheer possibility" that the County's *policy* for treating inmates in need
 17 of medical attention violates the Eighth Amendment. *Id.* Nor is it any help that Hoffarth
 18 believes his factual allegations "would raise a reasonable expectation that discovery will
 19 reveal evidence of express or implicit agreements amongst the Department as to the

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 21 force or substance, and does not give rise to any separate rights. See *Clouthier v. County*
 22 *of Contra Costa*, 591 F.3d 1232, 1241 (9th Cir. 2010) ("We have long analyzed claims that
 23 correction facility officials violated pretrial detainees' constitutional rights by failing to address
 24 their medical needs . . . under a 'deliberate indifference' standard."); *Frost v. Agnos*, 152
 25 F.3d 1124, 1128 (9th Cir. 1998) ("Because pretrial detainees' rights under the Fourteenth
 Amendment are comparable to prisoners' rights under the Eighth Amendment . . . we apply
 the same standards."); *Cabral v. County of Los Angeles*, 864 F.2d 1454, 1461 & n.2 (9th
 Cir. 1988) (explaining that "the fourteenth amendment due process rights of pretrial
 detainees are analogized to those of prisoners under the eighth amendment").

26 ² Under certain circumstances, "a single decision by municipal policymakers" can give
 27 rise to *Monell* liability even in the absence of a municipal policy or custom, but that theory
 28 is not implicated in Hoffarth's action. See *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480
 (1986). See *id.* at 481 ("If the decision to adopt [a] particular course of action is properly
 made by [the] government's authorized decisionmakers, it surely represents an act of
 official government 'policy' as that term is commonly understood.")

1 permitting, ignoring, or condoning this informal and/or formal custom in disregard of
2 Detention Policy and the United States Constitution.” (Dkt. No. 11 at 5, 7.) Hoffarth is not
3 entitled to take discovery to investigate his claims. He has to plead facts at the outset that
4 “raise a right to relief above the speculative level,” *Twombly* at 555, and he has failed to do
5 that. Hoffarth’s first and second causes of action—his *Monell* claims—are therefore
6 **DISMISSED WITH PREJUDICE**. It is apparent to the Court that amendment would be futile.

7 **B. The State Law Claims**

8 Hoffarth’s state law claims are all negligence-based, and the County objects to them
9 on the ground that “a public entity may not be held directly liable for general common law
10 negligence under any circumstances.” (Dkt. No. 3-1 at 7.) Indeed, under California law “[a]
11 public entity is not liable for an injury, whether such injury arises out of an act or omission
12 of the public entity or a public employee or any other person.” Cal. Gov. Code § 815(a).
13 There is an exception to this rule, however, “[w]here a public entity is under a mandatory
14 duty imposed by an enactment that is designed to protect against the risk of a particular kind
15 of injury.” Cal. Gov. Code § 815.6. In this circumstance, “the public entity is liable for an
16 injury of that kind proximately caused by its failure to discharge the duty unless the public
17 entity establishes that it exercised reasonable diligence to discharge the duty.” *Id.*

18 There are three components to liability under § 815.6. First, Hoffarth must point to
19 some specific enactment intended to protect against the particular kind of injuries he
20 allegedly suffered. Second, that enactment must be obligatory, rather than merely
21 discretionary or permissive, in its directions to the County. Third, the County’s failure to fulfill
22 its duty must be a proximate cause of Hoffarth’s injuries. *See de Villers v. County of San*
23 *Diego*, 156 Cal.App.4th 238, 256 (Cal. Ct. App. 2007). Hoffarth’s complaint states his
24 negligence claims in thin air, completely untethered to any statutory obligation of the County.
25 In his opposition brief, however, it becomes clearer: he alleges that his injuries were caused
26 by the County’s disregard for Title 15 of the California Code of Regulations, which sets
27 minimum standards for inmates’ medical care, as well as a “Health Care Procedures
28 Manual” developed pursuant to Title 15. (See Dkt. No. 11 at 8.) There are at least two

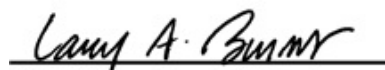
1 problems with this. First, Hoffarth can't expect the Court or the County to piece together his
2 state law claims based on explanations in his opposition brief. If Hoffarth believes Title 15
3 and the Manual are "enactments" within the meaning of § 815.6, he needs to lay out *in his*
4 *complaint* precisely what they obligate the County to do and precisely how the County failed
5 these obligations. Second, while Hoffarth may bring a general negligence claim under §
6 815.6, it isn't clear to the Court how he can bring his emotional distress claims under the
7 statute. Those claims are collateral to his actual injuries arising out of his staph infection,
8 and it is *those* injuries that, presumably, Title 15 and the Manual were designed to protect
9 against.

10 **IV. Conclusion**

11 The pleadings in this case leave much to be desired, but the Court is willing to allow
12 Hoffarth another try. His *Monell* claims are **DISMISSED WITH PREJUDICE**. The facts he
13 alleges in his complaint are simply too inadequate to support those claims. His state law
14 claims for negligence, however, are **DENIED WITHOUT PREJUDICE**. Within two weeks of
15 the date this Order is entered, Hoffarth should file an amended complaint that lays out in
16 rigorous detail why the County is negligent under § 815.6. Hoffarth should also give serious
17 thought to the viability of his emotional distress claims under § 815.6. Finally, the Court is
18 confused as to the status of Hoffarth's claims, presumably rooted in § 1983, against the
19 individual Defendants. They are named anonymously in Hoffarth's complaint, but it appears
20 they have not been served or made any kind of appearance in this case. If Hoffarth intends
21 only to pursue his claims against the County of San Diego at this point, his amended
22 complaint should reflect that.

23 **IT IS SO ORDERED.**

24 DATED: November 29, 2011

25 

26 **HONORABLE LARRY ALAN BURNS**
27 United States District Judge
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